

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to File a Statement of Water Diversion and Use by

Mendocino County
Statement Number: S017157 and S017160

SOURCE: Mill Creek

COUNTY: Mendocino County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. California Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream or a subterranean stream flowing through a known and definite channel (with a few limited exceptions) to file a Statement of Water Diversion and Use (Statement).
2. Mendocino County (Diverter) has filed initial Statements (Statement numbers S017157 and S017160), as required by California Water Code section 5101, and is alleged to have violated California Water Code section 5104, subdivision (a), which states, in pertinent part:

*Supplemental statements shall be filed at three-year intervals, prior to
July 1 of the year next succeeding the end of each three-year interval...*
3. Supplemental Statements of Diversion and Use (Supplemental Statements) are required by California Code of Regulations section 910 and 920, subdivision (a) to be filed electronically on forms available at the State Water Resources Control Board (State Water Board) website. The State Water Board's website provides access to the Electronic Water Rights Information Management System for filing Supplemental Statements.
4. California Water Code section 5107, subdivision (c)(1) provides that the State Water Board may administratively impose civil liability in the amount of \$1,000 for the failure to file a Statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person.
5. California Water Code section 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under California Water Code section 1055, subdivision (a). Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an Order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

ALLEGATIONS

6. Diverter owns two reservoirs on Mill Creek for which Initial Statements were filed in 2009 for diversions made under claim of pre-1914 appropriative right. Statement S017157 covers the diversion of water to storage in an 85 acre-foot reservoir at what is referred to as "Upper Mill Creek Dam." Statement S017160 covers the diversion of water to storage at what is referred to as "Middle Mill Creek Dam." Both Statements indicate that water is put to beneficial use to keep the on-stream reservoirs full for public recreation and fish propagation. For 2009, Diverter reported a total diversion of 40 acre-feet of water at Upper Mill Creek Dam and one acre-foot of water at Middle Mill Creek Dam.
7. On January 30, 2013, the Division of Water Rights (Division) mailed Diverter's designated representative (Mendocino County Water Agency c/o Roland Sanford) two letters (one each for S017157 and S017160) notifying Diverter of the requirement to electronically file Diverter's Supplemental Statements for 2010, 2011, and 2012 no later than June 30, 2013.
8. On July 26, 2013, the Division mailed Diverter's designated representative a second set of letters informing Diverter that the Division had still not received Diverter's Supplemental Statements as of July 22, 2013, and the letter informed Diverter of the potential monetary penalties.
9. On August 23, 2013, the Division mailed Diverter a third set of letters by certified mail, which indicated that Diverter's Statements had not been received by August 19, 2013. This letter identified that Diverter was subject to a \$1,000 penalty for each failure to file a Supplemental Statement, and if Diverter's reports are not received within 30 days of the date Diverter receives the letters, Diverter will be subject to an additional \$500 per Supplemental Statement per day for each additional day the violation continues.
10. The Division's records show that the August 23, 2013 certified letters were delivered by the U. S. Postal Service on August 26, 2013 to Mendocino County at 501 Low Gap Road, Ukiah, CA 95482. On October 2, 2013, Division staff contacted Mr. Dennis Slota of Mendocino County regarding the Supplemental Statements. Mr. Slota confirmed that the notice letters had been received by Mendocino County.
11. California Water Code section 5106, subdivision (b)(1) provides that the State Water Board may rely on the name and address included in Statements submitted under this part for the purpose of determining the names and addresses who are to receive notices with regard to proceedings before the State Water Board. The three notice letters discussed above were all sent to the names and addresses provided in initial Statement numbers S017157 and S017160 filed by Diverter's designated representative.
12. California Water Code section 5106, subdivision (b)(2) provides that any person may submit, in writing, a request to the State Water Board to provide notification to a different address, and the State Water Board shall provide the notification to that address. No such notice has been provided to the State Water Board since the filing of Statement numbers S017157 and S017160.
13. California Water Code section 5104, subdivision (b) requires that if there is a change in the name or address of the person diverting the water, a Supplemental Statement informing the State Water Board of that change in name or address must be filed. No notice of change in name or address of Diverter has been filed with the State Water Board since the filing of S017157 and S017160.
14. As of November 4, 2013, no Supplemental Statement had been filed for the years 2010 through 2012 by, or on behalf of, Diverter. All of the required Supplemental Statements were filed on November 5, 2013.

PROPOSED CIVIL LIABILITY

15. The deadline for submittal of Supplemental Statements for the years 2010 through 2012 was June 30, 2013, but Diverter failed to file the Statements by that deadline. California Water Code section 5107, subdivision (c)(1) provides that the State Water Board may administratively impose civil liability pursuant to section 1055 in an amount not to exceed \$1,000 for the failure to file a required Statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. Such notice was received by Diverter on August 26, 2013. Diverter failed to submit the required Supplemental Statements by September 25, 2013, the 30th day after receiving notice of the violation from the State Water Board, thus starting the count for additional days of violation.
16. As of November 4, 2013, Diverter had not filed Supplemental Statements and had been on notice of the violations for 70 days; therefore, Diverter is subject to civil liability in the amount of \$1,000 for each initial violation (2 violations, for a total of \$2,000) plus \$500 per day for 40 additional days of violation (September 26 through November 4, inclusive), or an additional \$20,000 for each Statement (2 violations, for a total of \$40,000). The potential maximum liability that can be considered for the violations alleged is \$42,000.
17. In determining the appropriate amount of a civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances. In this case, despite three notices being sent, Diverter failed to file Supplemental Statements for 70 days after the third notice was received. Failure to comply with the Supplemental Statement reporting requirements in a timely manner harms the Division's ability to accurately track water diversions from the water course and effectively regulate the resources that the Division is required to protect. Despite repeated notification to Diverter of the reporting requirements and potential liability for failure to submit a Supplemental Statement, Diverter failed to comply in a timely manner.
18. Having taken into consideration all relevant circumstances, including but not limited to the Diverter's failure to timely submit the Supplemental Statements, the harm of the missing or untimely filed Statement to the Division's effectiveness in regulating water diversions, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Assistant Deputy Director of Water Rights recommends the imposition of \$10,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

19. To promote resolution of the alleged Supplemental Statement filing violations, the Assistant Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). Diverter can avoid further enforcement action and settle the alleged failure to file Supplemental Statement violations by agreeing to comply with the terms of the Conditional Offer, provided below, as well as in the "Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration" (hereafter "Acceptance and Waiver") attached hereto as Exhibit "A."
20. The Conditional Offer requires Diverter to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$1,000, and waive the right to a hearing and reconsideration of the alleged violations.
21. To accept the Conditional Offer, Diverter must sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this complaint.

22. If there are extenuating circumstances that Diverter would like to discuss, such as an inability to pay the Expedited Payment Amount, then Diverter can contact the Division with that information as soon as possible but no later than the 20 days from receipt of this complaint.

RIGHT TO HEARING

23. Diverter may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that Diverter receives this complaint. (Wat. Code, § 1055, subd. (b).)
24. If Diverter requests a hearing, Diverter will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, a separate notice setting the time and place for the hearing will be mailed not less than ten days before the hearing date. The State Water Board may convene a settlement conference prior to noticing a hearing date.
25. If Diverter requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and/or its responsibilities under the public trust doctrine. Any State Water Board Order imposing an ACL shall be final and effective upon issuance.
26. If Diverter does not remit the Acceptance and Waiver, the Expedited Payment Amount, and electronically file the necessary Statements, or request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order and seek recovery of the liability imposed as authorized by California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



James W. Kassel, Assistant Deputy Director
Division of Water Rights

Dated:

NOV 12 2013

ORDER NO. 20xx-00xx-DWR

EXHIBIT A

**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION**

Mendocino County
Source: Mill Creek
County: Mendocino

By signing below and returning this Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) to the State Water Resources Control Board (State Water Board), Mendocino County (Diverter) hereby accepts the State Water Board's conditional settlement offer (Conditional Offer) and waives the right to a hearing before and reconsideration by the State Water Board at which violations alleged in the Administrative Civil Liability Complaint issued to Diverter (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Diverter agrees to perform the following within 20 days of receipt of the ACL Complaint:

- **Pay administrative civil liability as authorized by California Water Code section 5107, subdivision (c) in the amount of \$1,000** (Expedited Payment Amount) by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into the Water Rights Fund, which shall be deemed payment in full of any civil liability pursuant to California Water Code section 5107 (c) that otherwise might be assessed for the violations described in the ACL Complaint.

Diverter understands that this Acceptance and Waiver waives the Diverter's right to contest the allegations in the ACL Complaint and the civil liability amount proposed for those violations.

Diverter understands that the failure to submit payment of the Expedited Payment Amount along with the signed Acceptance and Waiver within 20 days of receipt of this notice shall render the State Water Board's Conditional Offer void. If the State Water Board's Conditional Offer is deemed void due to Diverter's non-performance, then the State Water Board will issue a final ACL Order and seek recovery of the full liability amount proposed in the ACL Complaint.

Diverter understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. The filing of a Statement of Diversion and Use with the State Water Board does not in any way establish or constitute evidence of a right to divert or use water. (Wat. Code, § 5106, subd. (a).)

Upon execution by Diverter, the Acceptance and Waiver and Expedited Payment Amount shall be mailed to the following:

**Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Enforcement Section
P. O. Box 2000
Sacramento, CA 95812-2000
Attn: John O'Hagan**

Diverter understands that this Acceptance and Waiver is not final until it is formally endorsed by the Division of Water Rights.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Diverter in the making and giving of this Acceptance and Waiver.

Mendocino County*

*Please make corrections as appropriate.

By: _____
Signed Name Date

Printed or typed name

Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTION 11415.60.

Approval of the Acceptance and Waiver has been delegated to the Assistant Deputy Director for Water Rights by State Water Board Resolution 2012-0029, and approval shall not limit the authority of the Executive Director or the Deputy Director for Water Rights, as delegated, to initiate any enforcement actions for the unauthorized diversion or use of water, for any future violations of the California Water Code, or violation of the terms of the Acceptance and Waiver.

By: _____
James W. Kassel,
Assistant Deputy Director
Division of Water Rights

Date